IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMOPNS NO.621 OF 2005
IN
SUIT NO.3639 OF 1999

M/s. Wipro Finance Ltd. ....Plaintiff.
And
M/s.Sewa Medicals. ....Defendants.
And
The Court Receiver. ....Respondent.
And
ARCIL. ....Applicant.

Mr.P.Sakseria i/by Manilal Kher Ambalal for the Applicant.

Mr. Dinesh Dubey for the Plaintiff.

Mr. D.R. Dhurat, 1st Asstt. to Court Receiver present.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2005

P.C.:

1. Heard counsel for the parties. Perused the pleadings.

2. This application is taken out by the third party praying that the plaintiffs, the defendants and/or the respondent/Court Receiver be restrained from in any manner whatsoever dealing with and/or interfering with the possession of the applicant over the properties of the defendant No.1 situated

at Alandi Market Road, Village Markal, Tal. Khed, District Pune in the State of Maharashtra described in the Schedule Exhibit-A annexed to the chamber summons.

3. The case of the applicant is that all the movables past, present and future belonging to the defendant No.1 have been hypothecated with the applicant for which reason the applicant is having first charge over the said properties. The applicant claims to have already taken over the possession of the said properties and registered its charge. On the other hand, the counsel for the plaintiff contends that the properties referred to in the Schedule Exh.A to the chamber summons are owned by the plaintiff and were made over to defendant No.1 under Higher Purchase Agreement between the parties, first executed on 19.5.1995.

4. On plain reading of the said agreement, it would appear that the schedule to the said agreement which is at Exh.B to the plaint mentions the type of equipments as plant and machinery. Annexure to the said agreement as referred to in the said schedule is however, not placed on record. From Clause No.1 of the agreement, it appears that the properties

were made over to the defendant no.1 under Higher Purchase Agreement. In support of the plea that the said properties were purchased by the plaintiff in the name of defendant No.1, documents are placed on record. However, those invoices pertain to period after agreement referred to in Exh.B. There is nothing in the agreement to even remotely suggest that the equipments were to be subsequently purchased, which would form part of the properties referred to in the Higher Purchase Agreement executed between the plaintiff and the defendant No.1.

5. Therefore, I find substance in the submission canvassed on behalf of the applicant that the equipments which were purchased, as can be seen from the different invoices placed on record by the plaintiff, are much after the execution of the Higher Purchase Agreement. In that sense, the plaintiff-company has not established the ownership with regard to the movable properties of the defendant No.1 lying on the site, on which the applicant has already registered its first charge and invoked the provisions of Securitization Act in that behalf.

6. Besides, the plaintiff as well as representative of the court receiver accepts that the properties referred to in the Chamber summons are not the subject matter of inventory prepared by the court receiver. If it is so, neither the court receiver nor the plaintiff can proceed in respect of the said properties unless the charge registered by the applicant in respect of movable properties of defendant no.1 is satisfied or same is lifted by order passed by the competent court in this behalf.

7. In the circumstances, the applicant ought to succeed in terms of prayer clause (a). Chamber summons is therefore, made absolute in terms of prayer clause (a). No order as to costs.

(A.M. KHANWILKAR,J.)